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632-1305

DEC 02 1993

DEC 23 '93 DOCKET FILE COPY ORIGINAL

FEDERAL COMM COMMISSION
OFFICE OF THE
SECRETARY
IN REPLY REFER TO.

Donald L. Pevsner, Esquire
7280 Southwest 134 Terrace
Miami, Florida 33156

PRM

Dear Mr. Pevsner:

This is in response to the petition for rulemaking you filed recently. The petition requested that the Commission adopt a rule requiring all interstate long-distance carriers to bill all customers on a per-second basis rather than on a per-minute or per-six second basis. It also asked the Commission to decide whether it is permissible for carriers to charge a higher rate for the first minute of connection time than is charged for additional minutes.

Because the rule changes you request appear unlikely to benefit consumers, we dismiss your petition for rulemaking without prejudice pursuant to section 1.401(e) of the Commission's Rules.¹

We believe it is unlikely that the rule changes you seek will reduce consumer phone bills. If per-second billing were required, interstate long-distance carriers would almost certainly react by setting their per-second rates at a level designed to recover the revenues that were generated by the previous rates.² Because the revenues generated under the current billing practices are permissible, it is unlikely that

¹ "Petitions which . . . plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner." 47 C.F.R § 1.401(e).

² Under the present system, carriers collect a certain level of revenue from calls terminating within a particular minute. For example, calls between 1 minute and 1 second, and 2 minutes would be charged as 2-minute calls and would produce a certain level of revenue. Assuming an even distribution of calls terminating in that minute, and assuming carriers were required to bill on a per-second basis, the total price for calls terminating in the first 30 seconds of any minute would likely decrease, while the total price of calls terminating in the last 30 seconds of any minute would increase.

Donald L. Pevsner, Esquire

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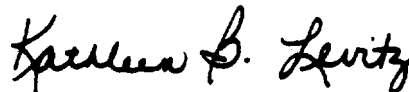
the Commission would object to new rates designed to maintain the current level of revenues. For example, for AT&T, the Commission uses price cap regulation to ensure that rates for residential services are just and reasonable. Under price caps, AT&T's rates are generally deemed permissible so long as they fall within the upper and lower rate boundaries for each category of services -- one of which includes AT&T services for residential and small business customers. The absolute revenue level generated by AT&T's residential services is in compliance with the Commission's price cap rules. Thus, even if AT&T were to bill on a per-second basis, it would most likely adjust its rate structure to produce the same level of revenues. The new rates would still fall within the acceptable range under price cap regulation, and residential customers would not experience a decrease in their long-distance bills.

Moreover, the Commission has not generally undertaken the prescription of telephone industry billing procedures. Numerous providers compete for the long-distance business of both residential and business customers. The billing practices of carriers vary -- some already offer sub-minute or per-second billing options, while others offer bulk rate options under which call length is irrelevant. Thus, carriers compete in terms of their billing practices, and customers are free to select a carrier that offers the most desirable billing options. If the Commission were to mandate a particular billing procedure, it would eliminate this form of service competition.

We conclude that the public interest is better served by our continuing to devote our limited resources to proceedings with a greater potential to produce substantial consumer benefits than the rulemaking you have requested.

Accordingly, we are returning your petition for rulemaking.

Sincerely,



Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Enclosure

R. Th Milk.

FEDERAL COMMUNICATIONS COMMISSION

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May 21, 1993

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Secretary
Federal Communications Commission
Washington, DC 20554

FILED

MAY 21 1993

Dear Sirs:

FCC-MAIL ROOM

Please furnish a copy of the enclosed Petition for Rulemaking to all parties, including the five Commissioners, enumerated in 47 CFR 1.419(b). Thank you.

Very truly yours,


Donald L. Pevsner
Attorney-at-Law [pro bono publico]

DLP: hs

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MAY 24 1993

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OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAY 21 1993

FCC-MAIL ROOM

Petition for Rulemaking of :
 :
DONALD L. PEVSNER, ESQ. :
 :
To Abolish Automatic Rounding- :
Up of Additional Long-Distance :
Minutes After the First Minute :

Docket

PETITION FOR RULEMAKING
of
DONALD L. PEVSNER, ESQ.

Communications with respect to this
document should be addressed to:

DONALD L. PEVSNER
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7280 S.W. 134 Terrace
Miami, FL 33156-6848
TEL.: (305)233-3337

Miami, Florida
May 21, 1993

MAY 24 1993

FEDERAL COMMUNICATIONS COMMISSION
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RECEIVED

MAY 24 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FCC-MAIL ROOM

Petition for Rulemaking of :
 :
DONALD L. PEVSNER, ESQ. :
 :
To Abolish Automatic Rounding- :
Up of Additional Long-Distance :
Minutes After the First Minute :

Docket

Donald L. Pevsner, Esq., pro bono publico, pursuant to 47 CFR 1.401, et seq., petitions the Commission for a rulemaking proceeding that would establish a new regulatory rule for all regulated long-distance, common-carrier telephone service providers and would prohibit the archaic and inequitable practice whereby these firms "round-off" minutes over the first minute to the next-highest full minute, or to a smaller increment of the next-highest full minute that is nevertheless longer than the actual time their customers are connected, and as grounds therefor says:

1. Since the beginning of long-distance telephone service, telephone service providers have been permitted to file tariffs that enshrine the practice, which has achieved the hallowed status of an "old Spanish custom", of rounding-off a one-minute, one-second through one-minute, fifty-nine-second long-distance call to two minutes for billing purposes, and to continue the practice through all successive minutes of their customers' calls. There was once a good justification for this practice: telephone companies did not possess timing equipment sophisticated enough to time long-distance calls to the second, and the consumer became the victim of this lamentable technological lapse.

2. However, timing technology in the year 1993 has, for at least a decade, been able to time all long-distance calls to the second at no incremental cost to the major telephone companies, except for the negative impact that such a development would have on the ill-gotten revenues currently being derived from the practice of "rounding-off" all such calls to a higher minute, or fraction thereof. And, as the technology manifestly does now exist, the telephone companies are applying it in a basely discriminatory manner, as follows:

(a) The "FORTUNE 500" set--major volume users--are offered per-second billing by all of the major long-distance service providers, who use this belated equity as a marketing tool.

(b) Small-business is offered six-second billing (i.e., billing to the next tenth of a minute, which is somewhat better than rounding-off such calls to the next full minute, but still inequitable) in various AT&T advertisements, including the attached example from HOTEL & MOTEL MANAGEMENT Magazine dated June 8, 1992, marked APPENDIX A, and limited to an international calling-plan.

(c) The small user, including all residential users, gets mulcted by paying between sixty times the price (when a full minute charge is assessed for one second's connection-time over the preceding minute) and one-sixtieth the price (for a fifty-nine second connection-time in an incremental full minute) in excess of the price that should be charged, utilizing mandatory per-second billing for all users, without preference and discrimination.

3. There is no valid economic or other justification for current telephone service providers' practice on point--and every reason to reform their inequitable conduct on an expedited basis, through formal hearings following Commission granting of this petition.

4. In 1972, your petitioner successfully challenged another archaic and unjustifiable practice by international airlines, before the Civil Aeronautics Board. The carriers were providing a ludicrously-small free baggage allowance of 44 pounds, and charging an inordinate sum for excess-baggage based on a percentage of the first-class fare for all passengers, including the vast majority in economy class. When 34 years' worth of hearings were done, the evidence revealed that the baggage allowance derived directly from that permitted on the "Overland Mail" horse-drawn stagecoach in the Old West of 1867...and the excess charge from that assessed when all flights were first-class, and economy class (pre-1952) had not yet arrived on the transport scene. Things are no different in the instant matter, as the telephone service providers continue to apply 1920's technology to their billing methodology for most users, while these ratepayers have already borne the cost of the massive computerized equipment that, prima facie, makes such billing methods not only obsolete but insulting.

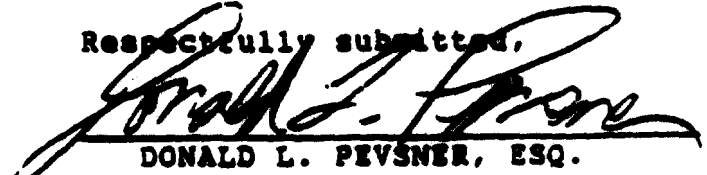
The Commission is therefore requested to grant the petition, and to adopt rules, after a formal hearing on the merits, that would provide the following relief:

(1) All tariffs permitting rounding-off of fractions of minutes to the next-highest full minute, or to any portion thereof that is greater than the actual number of seconds for which the customer is connected, shall be disapproved and revoked immediately

(2) All long-distance users shall receive per-second billing as a fundamental right, with no increase in rates permitted by virtue of the Commission's termination of an inequitable pricing practice by interstate² long-distance telephone service providers.

(3) Your petitioner, as a separate but very germane issue, asks the Commission to resolve the issue, within the context of this proceeding, of whether the long-distance service providers' current practice of charging a higher price for the first minute's connection-time than for each additional minute's connection-time should be permitted to persist. If so, it is submitted that per-second billing, albeit at a slightly higher rate, should be mandated for the first minute's connection-time as well, as there is no valid motive save unquenchable greed for the status quo. If you do not pay for two pounds of steak when you have purchased between one pound, one ounce and one pound, fifteen ounces thereof there is nothing magical about a "public utility" that should permit a different modus operandi--period. [o: and international]

Respectfully submitted,


DONALD L. PEVSNER, ESQ.

Miami, Florida
May 21, 1993

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 47 CFR 1.47, that I have served a true copy of the foregoing Petition for Rulemaking upon the following parties, by placing same in the first-class mails of the United States on this 21st day of May, 1993:

- | | |
|--|--|
| (1) General Counsel-Regulatory Affairs
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920 | (8) Genl. Counsel-
Regulatory Affairs
Southern Bell
675 W. Peachtree St.
Atlanta, GA 30375 |
| (2) General Counsel-Regulatory Affairs
MCI
1801 Pennsylvania Avenue, N.W..
Washington, DC 20006 | |
| (3) General Counsel-Regulatory Affairs
U.S. SPRINT
2330 Shawnee Mission Parkway
Shawnee Mission, KS 66205 | |
| (4) Executive Director
NASUCA
1133 15th Street, N.W.-Suite 575
Washington, DC 20005 | |
| (5) Philip Shapiro
New York State Consumer Protection Board: One Commerce Plaza
Albany, NY 12206 | |
| (6) Jack Shreve
Public Counsel
State of Florida
Tallahassee, FL 32399 | |
| (7) Dr. Alfred E. Kahn
308 North Cayuga Street
Ithaca, NY 14850 | |


DONALD L. PEVSNER, ESQ.

H&MM • JUNE 8, 1992

Do you spend at least \$2,000 on international calls a month? Would you like to save as much as 30% on all those calls? If so, do what Faden & Faden just did. Upgrade your telecommunications service to AT&T MEGACOM® WATS.

With MEGACOM WATS your phone service is enhanced with T1.5 technology to give you direct access to the AT&T Worldwide Intelligent Network. The results are lower rates based on 6-second billing (which begins after an initial 30-second period), clear connections, quick call set up and the capacity to transmit high quality data and facsimile.

Best of all, if you sign up by June 13, 1992, AT&T will hook you up for free. That could save you as much as \$2,000. (You must request an installation date no later than September 13, 1992, and maintain service at a \$1,900 per month average for 6 months)

For more information contact your AT&T Account Executive or call 1 800 952-4275. And take a financial tip from Faden & Faden.

The MEGACOM WATS Savings Plan.

A World of Help™ from AT&T.



Figures as compared to AT&T MLB rates.

MEGACOM WATS savings vary based on your current usage and the length of your commitment.

1-800

Communications Commission

§ 1.401

shall be a clear description of the design, including the definition of the universe under study, the sampling frame, and the sampling method, an explanation of the method of selecting the sample and the characteristics measured or counted. In the case of econometric investigations, the econometric model shall be completely specified and the reasons given for the assumption and statistical specification. The effects on the final results of changes in the assumptions shall be made clear. When alternative models and variables have been considered, a record shall be kept of alternative studies, so as to be available upon request. In the case of mental analyses, a clear and complete description of the experimental design shall be set forth, including a specification of the conditions and how the conditions were realized. In addition, the methods of making observations and adjustments, if any, to observed data shall be described. In the case of a kind of statistical study, the following items shall be set forth clearly: formulas used for statistical estimates, standard errors and test statistics, a description of statistical tests, and related computations, computer programs and final results. Summaries of input data shall be provided. Upon request, the actual data shall be made available. In the case of all studies and analyses offered in evidence in connection with carrier hearing proceedings, in addition to the kinds described in paragraph (a) of this section, there shall be a clear statement of the study, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments which conclusions are based on and a statement of the relative weights attached to the various factors in arriving at each conclusion, together with an evaluation of the alternative courses of action considered. Lists of input data shall be made available upon request.

316254, Oct. 16, 1970

§ 1.364 Testimony by speakerphone.

(a) If all parties to the proceeding consent and the presiding officer approves, the testimony of a witness may be taken by speakerphone.

(b) Documents used by the witness shall be made available to counsel by the party calling the witness in advance of the speakerphone testimony. The taking of testimony by speakerphone shall be subject to such other ground rules as the parties may agree upon.

(43 FR 33251, July 31, 1978)

Subpart C—Rulemaking Proceedings

AUTHORITY: 5 U.S.C. 553.

SOURCE: 28 FR 12432, Nov. 22, 1963, unless otherwise noted.

GENERAL

§ 1.399 Scope.

This subpart shall be applicable to notice and comment rulemaking proceedings conducted under 5 U.S.C. 553, and shall have no application to formal rulemaking (or rate making) proceedings unless the Commission directs that it shall govern the conduct of a particular proceeding.

(43 FR 25735, May 19, 1977)

§ 1.400 Definitions.

As used in this subpart, the term *party* refers to any person who participates in a proceeding by the timely filing of a petition for rule making, comments on a notice of proposed rule making, a petition for reconsideration, or responsive pleadings in the manner prescribed by this subpart. The term does not include those who submit letters, telegrams or other informal materials.

(41 FR 1257, Jan. 7, 1976)

PETITIONS AND RELATED PLEADINGS

§ 1.401 Petitions for rulemaking.

(a) Any interested person may petition for the issuance, amendment or repeal of a rule or regulation.

(b) The petition for rule making shall conform to the requirements of §§ 1.49, 1.52 and 1.419(b) (or § 1.420(a)).

§ 1.402

if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, DC 20554.

(c) The petition shall set forth the text or substance of the proposed rule, amendment, or rule to be repealed, together with all facts, views, arguments and data deemed to support the action requested, and shall indicate how the interests of petitioner will be affected.

(d) Petitions for amendment of the FM Table of Assignments (§ 73.202 of this chapter) or the Television Table of Assignments (§ 73.606) shall be served by petitioner on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensee or permittee. A draft Notice of Proposed Rule Making may be submitted with a petition for amendment of the FM or Television Table of Assignments.

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

[28 FR 12432, Nov. 22, 1963, as amended at 28 FR 14563, Dec. 31, 1963; 40 FR 53391, Nov. 18, 1975; 45 FR 42621, June 23, 1980]

§ 1.403 Pioneer's preference.

(a) When filing a petition for rule making pursuant to § 1.401 of this part that seeks an allocation of spectrum for a new service or that, by use of innovative technology, will substantially enhance an existing service, the petitioner may also submit a separate request that it be awarded a pioneer's preference in the licensing process for

47 CFR Ch. I (10-1-92 Edition)

area for which the preference is sought, and must address any conflicting licensing rules, showing how these rules should or should not apply. The applicant must demonstrate that it (or its predecessor-in-interest) has developed the new service or technology; e.g., that it (or its predecessor-in-interest) has developed the capabilities or possibilities of the technology or service or has brought them to a more advanced or effective state. The applicant must accompany its preference request with either a demonstration of the technical feasibility of the new service or technology or an experimental license application, unless an experimental license application has previously been filed for that new service or technology. If the applicant files or has filed an experimental license application, it must specify the area in which it intends to conduct its experiment and whether that is the area for which the preference is sought. In determining in its discretion whether to grant a pioneer's preference, the Commission will consider whether the applicant has demonstrated that it (or its predecessor-in-interest) has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service. Additionally, the preference will be granted only if rules, as adopted, are a reasonable outgrowth of the proposal and lend themselves to the grant of a preference.

(b) A party that believes that it can implement a new technology or service without a rule change may request a waiver of § 1.402(a) to permit it to file a pioneer's preference request without filing a petition for rule making. The